FILED

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

THE GERMAN ROMAN CATHOLIC CONGREGATION OF ST. MICHAEL'S CHURCH, SOUTH SIDE, PITTSBURGH, ALLEGENY COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, *et al.*,

Petitioners,

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

---

PETITION FOR WRIT OF CERTIORARI

DAVID K. MCMULLIN
Counsel of Record
309 Smithfield Street
Suite 5200
Pittsburgh, PA 15222-2220
(412) 471-3011
Attorney for Petitioners

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83 pp

QUESTIONS PRESENTED FOR REVIEW

1. Where a state statute, incorporating therein the Canon Law of a church which is legislated by its temporal head who is also a foreign sovereign absoulte monarch, in its application deprives persons of property and further denies them legal standing to defend against such taking, is the refusal of the state courts to consider questions of the unconstitutionality of said Statute establishing a dangerous precedent allowing state governments to deprive persons of rights and property secured by the United States Constitution, especially so were the result reached by the state's actions is contrary to a ruling of this Court?

2. Is said statute, the Act of June 20, 1935, P.L. 351 § 1, 10 P.S. § 81, unconstitutional because it violates the following provisions of the United States Constitution:

(a) Article I, Section 10 (1): The Act is unconstitutional as it impairs contracts set forth in deeds of trust;

(b) Article I, Section 10 (3): The Act gives to a foreign sovereign without permission of Congress the power to determine and change property law in Pennsylvania;

(c) Article IV, Section 4: The Act surrenders law making authority in Pennsylvania to a foreign absolute monarch;

(d) Amendment 1: The Act by incorporating Canon Law into the civil law necessariiy co-mingles church and state functions resulting in the establishment of a religion;

(e) Amendments 5 & 14: The Act deprives persons of property rights without any requirement for compensation being paid, without a forum in which to be heard and without due process of law?

LIST OF PARTIES

Petitioners

(1) The German Roman Catholic Congregation of Saint Michael's Church, (South Side, Pittsburgh, Pennsylvania), an unincorporated association, by and through Dennis Bielewicz, Dorothy Senn and Fred Berner, Trustees Ad Litem,

(2) The Roman Catholic Congregation of Immaculate Conception Church, (Càrnegie, Pennsylvania), an unincorporated association, by and through James Longo, Michael Mazur and Merle Utchel, Trustees Ad Litem,

Respondent

(1) The Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh,

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IN THE

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OCTOBER TERM, 1997

No. ———

THE GERMAN ROMAN CATHOLIC CONGREGATION OF ST. MICHAEL'S CHURCH, SOUTH SIDE, PITTSBURGH, ALLEGENY COUNTY, PENNSYLVANIA, AN UNINCORPORATED ASSOCIATION, *et al.*,

Petitioners,

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THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

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OPINIONS OF LOWER COURTS

1. Opinion, Court of Common Pleas of Allegheny, County, Pennsylvania. Unpublished December 20, 1995. Appendix p. 6a.

2. Opinion, Superior Court of Pennsylvania, Pittsburgh District, 447 PA Super. 208. October 24, 1996. Appendix p. 2a.

3. Order, Supreme Court of Pennsylvania, Western District. Unpublished, April 16, 1997. Appendix p. 1a.

STATEMENT OF JURISDICTION

Petitioners are seeking review of a final order by the Supreme Court of the Commonwealth of Pennsylvania, the highest court of the State where the decision was rendered, on April 16, 1997, which refused to allow Petitioners leave to appeal for discretionary review of an Order of October 24, 1996 from the Superior Court of the Commonwealth of Pennsylvania. Petitioners have not requested any extension of time within which to file the instant Petition For Writ of Certiorari. The statutory provision believed to confer jurisdiction on this Court to review the aforementioned Order is 29 U.S.C. § 1257(a). This Petition is timely filed under Supreme Court Rule 13.1. and 28 U.S.C. § 2102(C) & (F).

VERBATIM REPRODUCTION OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. STATUTE

Commonwealth of Pennsylvania, Act of June 20, 1935, P.L. 351 § 1, 10 P.S. § 81. Whenever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling

power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated; And provided, All charters heretofore granted for any church, congregation, or religious society, without incorporating therein the requirement that the property, real and personal, of such corporation, shall be taken, held and enure subject to the control and disposition as herein provided, but which are in other respects good and valid, and shall be in all respects as good and valid, for all purposes, as if the said requirement had been inserted therein when the said charters were originally granted; and the title to all property, real and personal, heretofore bequeathed, devised, or conveyed to such church, congregation, or religious society, or which may have heretofore been granted or conveyed by such corporation, shall be firm and stable forever, with like effect as though the said requirements had been contained in the charter of such corporation when the same was originally granted: Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.

2. CONSTITUTION PROVISIONS

(i) Article I, Section 10. Cl. 1. "*Powers denied states —Treaties—Money—Ex post facto laws—Obligation of contracts.* No State shall enter into any treaty, alliance,

or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

(ii) Article I, Section 10, Cl. 3. "*Tonnage—State Compacts—War.* No State shall without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

(iii) Article IV, Section 4. "*Form of State Governments—Protection.* The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

(iv) United States Constitution. Amendment 1. "*Religious and political freedom.*" Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

(v) United States Constitution. Amendment 5. "*Criminal actions—Provisions concerning—Due process of law and just compensation clauses.* No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or prop-

erty, without due process of law; not shall private property be taken for public use, without just compensation.

(vi) United States Constitution. Amendment 14. Section 1. "*Citizens of the United States.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This matter involves a Civil Action In Equity brought by two Roman Catholic Congregations, unincorporated associations, as are more specifically identified in the caption, by and through their respective elected Trustees Ad Litem. In the Complaint, the Congregations sought injunctive and other equitable relief against the Respondent who had entered upon a course of conduct that deprived the Congregations of the beneficial enjoyment of real properties that had been dedicated to their use and which had been held in trust for them by the Respondent and his predecessor Trustees. The trusts had been created in said real property by recorded deeds of conveyance. In said deeds, the designated beneficiaries of the trusts were the Congregations (the people) and not the thereafter created parishes (administrative subdivisions of the diocese). Respondent had closed the churches and other buildings situated on said properties, locked the Congregations out of same and has been attempting to sell said real properties which, at the time of his wrongfully converting same from the beneficiaries of the trusts, he declared in writing as now being the property of certain new administrative units of the Diocese of Pittsburgh. The Trustee claimed authority to so violate the trusts by virtue of the aforesaid Act of 1935 without any compensation

being paid or offered to the Congregations and without the undertaking of any legal proceeding in any forum.

The Congregations raised all of the arguments about Constitutional defects in the Complaint, their Response to Preliminary Objections, their Motion for Partial Summary Judgment and Response to their Trustee's Motion for Summary Judgment, and in their Briefs in the court of first instance, namely the Common Pleas of Allegheny County, Pennsylvania. These Constitutional defects were further raised in the record and Brief filed by the Congregations in the Superior Court of Pennsylvania upon Appeal. Said defects were further raised in the record and Petition for Allowance of Appeal with the Supreme Court of Pennsylvania.

The Constitutional issues were never addressed or decided at any level as the Court of Common Pleas of Allegheny County and the Superior Court of Pennsylvania both held that the Congregations lacked legal standing to bring the litigation as they had lost such standing pursuant to the provisions of the Act of 1935. The Supreme Court of Pennsylvania, by refusing to accept the Appeal, allowed the Order of the Superior Court to become law in Pennsylvania.

The Congregations are not contesting the right of their Trustee in his capacity as Bishop of Pittsburgh to terminate the legal existence of parishes, to govern his diocese or to challenge his authority in ecclesiastical or spiritual matters. They are seeking only to preserve the trusts, to have a judicial declaration determining the ownership of the trust assets and protecting their property rights therein, all purely secular and civil matters.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

I. THE STATE COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A PRIOR RELEVANT DECISION OF THIS COURT.

In *Jones v. Wolf*, 443 U.S. 595 (1979), this Court held that secular courts may use general principals of law to resolve church property disputes that do not involve religious questions. It was therein set forth that a Court may resolve . . . church property disputes by considering the language of deeds to property, state statutes and the constitution of the central denomination, interpreting them pursuant to general legal principals.

The Pennsylvania decisions involved herein, in effect, hold all such property disputes to be purely ecclesiastical matters and not subject to review by civil courts. The decision of the Pennsylvania Appellate Courts is therefore contrary to the decision of this Court in *Jones v. Wolf*, supra.

II. THE STATE COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Commonwealth of Pennsylvania has enacted and judicially interpreted an Act which in its application to the Petitioners has violated rights secured to them by the United States Constitution. In effect, the legislature and courts of Pennsylvania have created a federal question as to whether they are empowered to deprive persons of their rights in property and also their rights to come into Court to defend against such takings. Prior to the enactment of the statute, there was no argument that congregations such as the Petitioners herein had established property rights along with a capacity and standing to protect same in civil courts. In other words, but for the

Act of 1935, the Petitioners would be found to have legal standing to come into civil court in order to protect their rights in the properties in question. The Act, as interpreted by the Courts, purportedly took away their legal standing to do so. When the Petitioners attacked that statute as being unconstitutional on its face and also in its application, the state courts would not entertain argument on those points holding that Petitioners had no standing to attack the constitutionality of the statute as the statute itself had taken away their standing. The Act created the perfect "Bootstrap Argument" that the Petitioners could not defeat.

By virtue of its "Bootstrap", the State has avoided the federal questions concerning the Constitutional defects of its statute and judicial holdings. The Constitutional defects pose important federal questions that must be decided by this Court. These are as follows:

(a) Article I, Section 10, Clause 1 prohibits any state from enacting a law impairing the obligation of contracts. The obligation of contracts has received protection from the United States Supreme Court in a line of cases stretching back to *Fletcher v. Peck,* 6 Cranch 87, 136 (1810). Trusts, such as the ones that were established for the Petitioners, are contractual in nature and deserving of constitutional protection. *Coolidge v. Long,* 282 U.S. 582, 75 L. Ed. 562, 51 Sp. Ct 306 (1931). The Congregations were the beneficiaries of the trusts created and as such possessed vested, beneficial interests in the trust assets without question prior to the enactment of the Act of 1935. *Kranczunas v. Hoban*, 221 Pa. 231, 70 A. 740 (1908). Petitioners' trusts provisions were observed by the Respondent Trustee until 1992 when he undertook actions to deprive Petitioners of the beneficial enjoyment of the trust assets, locked them out of the churches and other buildings and further acted to wrongfully convert the trust assets to the use and benefit of

third parties. Petitioners' efforts to force Respondent to observe his duties as Trustee led to the present case.

(b) The Act gives to a foreign sovereign, without the permission of Congress, the power to determine and change property law and legal standing in Pennsylvania. In addition, the Act surrenders the State's law making authority to an absolute monarch, the ruler of Vatican City. As such, the Act violates Article I, Section 10(3) and Article IV Section 4 of the United States Constitution. States are not permitted to do what Pennsylvania had done and by ceding its legislative and judicial authority to the Vatican the State has effectively denied fundamental due process guaranteed to the Petitioners by Amendments 1, 5 and 14.

(c) The State, by its incorporation of the law of Vatican City and the Roman Catholic Church into the civil law of Pennsylvania has impermissibly co-mingled church and state resulting in a violation of the establishment clause of Amendment 1. There is no separation of church and state when the Pope decides what the property law of the state is and in so doing, through the actions of a bishop and trustee, deprives owners of their property rights. The Act of 1935 has been applied unconstitutionally as a violation of Amendment 1 as it works an establishment of a religion to take the property owned by organized groups of people, American citizens, without compensation and to turn such property over to the Roman Catholic Church as an institution. Locking the members of these Catholic Congregations out of the church buildings owned by them is also a violation of their rights to associate together in order to exercise their freedom of religion.

(d) The Act of 1935, as applied by the Pennsylvania courts, has taken property away from these Congregations without due process of law, in violation of Amendment 5 and Amendment 14 of the United States Constitution, as

there are no requirements for notice, hearing or compensation.

CONCLUSION

For all of the above reasons, this Court should grant the Petition of the Congregations in this matter and review the erroneous decision of the Supreme Court of Pennsylvania.

Respectfully submitted,

DAVID K. MCMULLIN
Counsel of Record
309 Smithfield Street
Suite 5200
Pittsburgh, PA 15222-2220
(412) 471-3011
Attorney for Petitioners

Dated: July 14, 1997

APPENDIX

APPENDIX

IN THE SUPREME COURT OF PENNSYLVANIA

No. 0730 W.D. Allocatur Docket 1996

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH (South Side, Pittsburgh, Pennsylvania), an unincorporated association, by and through DENNIS BIELEWICZ, DOROTHY SENN and FRED BERNER, trustees ad litem, and the ROMAN CATHOLIC CONGREGATION OF IMMACULATE CONCEPTION CHURCH, (Carnegie, Pennsylvania), by and through JAMES LONGO, MICHAEL MAZUR, and MERLE UTCHEL, trustees ad litem,

Petitioners

v.

THE MOST REVEREND DONALD W. WUERL,
Bishop of the Roman Catholic Diocese of Pittsburgh,
Respondent

Petition for Allowance of Appeal from Superior Court

ORDER

PER CURIAM:

AND NOW, this 16th day of April, 1997, the Petition for Allowance of Appeal is hereby DENIED.

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 00142 Pittsburgh 1996

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH (SOUTH SIDE, PITTSBURGH, PENNSYLVANIA), AN UNINCORPORATED ASSOCIATION, BY AND THROUGH DENNIS BIELEWICZ, DOROTHY SENN AND FRED BERNER, TRUSTEES AD LITEM, AND THE ROMAN CATHOLIC CONGREGATION OF IMMACULATE CONCEPTION CHURCH (CARNEGIE, PENNSYLVANIA) BY AND THROUGH JAMES LONGO, MICHAEL MAZUR AND MERLE UTCHEL, TRUSTEES AD LITEM,

Appellants

v.

THE MOST REVEREND DONALD W. WUERLY, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

Appellee

Appeal from the ORDER ENTERED December 20, 1995, in the Court of Common Pleas of ALLEGHENY County, CIVIL, No. GD 92-19078

BEFORE: KELLY, JOHNSON, and OLSZEWSKI, JJ.

MEMORANDUM

Filed: October 24, 1996

Appellants, the German Roman Catholic Congregation of St. Michael's Church, by and through its trustees *ad litem*, and the Roman Catholic Congregation of Immacu-

late Conception, by and through its trustees *ad litem,* initiated the instant action by filing a complaint in equity against appellee, the Most Reverend Donald W. Wuerl, Bishop of the Roman Catholic Diocese of Pittsburgh. The complaint asserted and sought to enforce appellants' rights to real and personal property formerly owned by the now-suppressed parishes of St. Michael's and Immaculate Conception.

On December 20, 1995, the Honorable Eugene B. Strassburger III granted summary judgment in favor of appellee. The court found that appellants lacked standing to maintain this action in the wake of the suppression of the parishes of St. Michael's and Immaculate Conception. From this order, appellants filed the instant appeal.

In asserting that the trial court erred in granting summary judgment, appellants claim that they have standing to maintain this action. Even though appellee suppressed the parishes of St. Michael's and Immaculate Conception, appellants argue that a congregation exists as a separate entity and that the congregation can still maintain this action. Appellants acknowledge that the Pennsylvania Supreme Court denied standing to suppressed parishes in two early cases, *Canovaro v. Brothers of the Order of Hermits of St. Augustine,* 326 Pa. 76, 191 A. 140 (1937), and *Post v. Dougherty,* 326 Pa. 97, 191 A. 151 (1937). Nevertheless, appellants argue that these decisions are not controlling because: 1) appellants herein are proceeding as a congregation and not as a parish; 2) *Canovaro* and *Post* relied upon an old version of the Code of Canon Law; and 3) appellee herein violated numerous provissions of the current Code of Canon Law in suppressing the parishes. Pointing to a recent decision of the Apostolic Signatura, the highes tribunal of the Roman Catholic Church, appellants claim that recent decisions compel the conclusion that a congregation has proper standing.

Unfortunately for appellants, identical arguments were recently adressed and rejected by this Court in *Croation*

Roman Catholic Congregation of the Holy Trinity Church v. Wuerl, —— Pa.Super ——, ——, 668 A.2d 1151, 1152-53 (1995). In *Croatian Roman Catholic*, this Court first cited *Canovaro* and *Post* for the proposition that suppressed parishes have no standing. *Id.* We then held that no relevant distinction existed between a congregation and a parish for purposes of determining standing. *Id.* The attempts to avoid application of *Canovaro* and *Post,* by reference to the new Code of Canon Law and to possible violations of the law during the suppression process, were promptly rejected by this Court. *Id.* We found nothing to suggest that a new Code of Canon Law would compel a different conclusion on the isue of standing. As for the suppression process, we found such process to be a clearly ecclesiastical matter in which the courts should not interfere. *Id.* Finally, with respect to the decision of the Apostolic Signatura, we found that civil courts are not bound by decisions of a church tribunal. *Id.*

Since the arguments presented by appellants have already been examined and rejected by a prior Superior Court panel, appellants' claim of standing must fail. Accordingly, we affirm the trial court's order, dated December 20, 1995, granting summary judgment in favor of appellee.[1]

Order affirmed.

---

[1] In light of our conclusion that appellants lacked standing to maintain this action, we need not address the other three issues, addressing the merits of the controversy, raised in appellants' brief. *See In re Barnes Foundation,* 443 Pa.Super. 369, ——, 661 A.2d 889, 894, *appeal denied,* —— Pa. ——, 668 A.2d 1119, and *appeal denied,* —— Pa. ——, 674 A.2d 1064 (1995).

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

No. 142 Pittsburgh, 1996

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH (SOUTH SIDE, PITTSBURGH, PENNSYLVANIA), *et al.*,
Appellants

v.

THE MOST REVEREND DONALD W. WUERLY, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,

---

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of ALLEGHENY County be, and the same is hereby AFFIRMED.

BY THE COURT:

/s/ Eleanor R. Valecko
Deputy Prothonotary

DATED: October 24, 1996

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. GD92-19078

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH, *et al.*,
Plaintiffs

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,
Defendant

OPINION

As noted in the order appealed from, this case is on all fours with *Croatian Roman Catholic Congregation* v. *Wuerl*, Nos. 122, 254 and 733 Pittsburgh 1995 (Pa. Super. 12/18/95). At the oral argument in the instant case, counsel for appellants conceded that *Croatian* controlled this case, and that a loss by the plaintiffs there would compel a loss by the plaintiffs here. It would be gilding the lily for me to try to improve on the reasoning of the *Croatian* court, and I thus adopt that opinion as my opinion here.

STRASSBURGER, J.

January 26, 1996

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. GD92-19078

THE GERMAN ROMAN CATHOLIC CONGREGATION OF SAINT MICHAEL'S CHURCH, *et al.*,
Plaintiffs

v.

THE MOST REVEREND DONALD W. WUERL, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH,
Defendant

MEMORANDUM ORDER

AND NOW, therefore, this 20th day of December, 1995, after argument, it is hereby ORDERED that Plaintiffs' motion for partial summary judgment is denied, and the motion of Defendant for summary judgment is granted.

The instant case is controlled by *Croatian Roman Catholic Congregation v. Wuerl*, Nos. 122, 254 and 733 Pittsburgh 1955 (Pa. Super.), filed December 18, 1995. The Court there analyzed all of the issues presented herein, and while recognizing as I do the obvious devotion of the plaintiff parishioners, found that they lacked standing.

BY THE COURT:

/s/ Gene Strassburger
J.